

The Office Action also requires election of a species from among numerous species of relationships between biological molecules listed in claim 32. In response, applicants elect for examination protein expression regulation, with traverse.

Applicants initially note that both requirements for election of species appear to be improperly drawn. The biological molecule species are not embodiments reciting mutually exclusive characteristics as required to make a proper election of species requirement. Similarly, the relationship between biological molecule species are not embodiments reciting mutually exclusive characteristics as required to make a proper election of species requirement. In this regard applicants refer to MPEP § 806.04(f) which states in relevant part:

The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first.

Thus, this test requires that the subject matter of claims have **mutually exclusive** subject matter, as disclosed in the specification, for restriction to different species. In this case, base claim 1 recites the use of a set of biological molecules. Because the set of biological molecules can include more than one biological molecule (and more than one type of biological molecule), multiple different biological molecules listed in claim 28 can be used together in the claimed method. Thus, the biological molecules listed in claim 28 are not “found in a first species [of the method] but not in a second.” Accordingly, the present election requirement for the biological molecules is improper and applicants request its withdrawal.

Similarly, base claim 1 recites the use of a set of relationships between biological molecules. Because the set of relationships can include more than one relationship (and more

than one type of relationship), multiple different relationships listed in claim 32 can be used together in the claimed method. Thus, the relationships listed in claim 32 are not "found in a first species [of the method] but not in a second." Accordingly, the present election requirement for the relationship between biological molecules is improper and applicants request its withdrawal.

In regard to designation of generic claims, applicants refer to MPEP § 806.04(e) which states that "[c]laims may be restricted to a single disclosed embodiment (i.e. a single species, and thus be designated *a specific or species claim*), or a claim may include two or more of the disclosed embodiment...(and thus be designated *a generic or genus claim*)" (emphasis in original). In this regard, applicants note that none of the claims are limited to species carbohydrates or to species protein expression regulation. Thus, none of the claims are specific claims as defined above. Accordingly, applicants note that, with respect to species carbohydrates, claims 1-63 are generic, and with respect to species protein expression regulation, claims 1-63 are generic.

Favorable consideration of claims 1-63 is earnestly solicited.


A Credit Card Payment Form PTO-2038 authorizing payment in the amount of \$55.00, representing the fee for a small entity under 37 C.F.R. § 1.17(a)(1), and a Request for Extension of Time are enclosed. This amount is believed to be correct; however, the Commissioner is

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hereby authorized to charge any additional fees which may be required, or credit any
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Respectfully submitted,

NEEDLE & ROSENBERG, P.C.




Robert A Hodges
Registration No. 41,074

NEEDLE & ROSENBERG, P.C.
Customer Number 23859
(678) 420-9300
(678) 420-9301 (fax)

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Robert A. Hodges

12/2/2003

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